

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FILED

FEB 10 1975

H. STUART CUNNINGHAM, CLERK  
UNITED STATES DISTRICT COURT

THE MAGNAVOX COMPANY, a )  
Corporation, and SANDERS )  
ASSOCIATES, INC., a )  
Corporation, )

Plaintiffs, )

v. )

BALLY MANUFACTURING )  
CORPORATION, a Corporation, )  
et al., )

Defendants. )

Civil Action  
No. 74 C 1030

PLAINTIFFS' MOTION FOR LEAVE TO FILE  
INSTANTER SUPPLEMENTAL MEMORANDUM  
IN OPPOSITION TO MOTION OF DEFENDANT  
BALLY MANUFACTURING CORPORATION  
FOR SUMMARY JUDGMENT

Plaintiffs hereby move the Court for leave to file instanter PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO MOTION OF DEFENDANT BALLY MANUFACTURING CORPORATION FOR SUMMARY JUDGMENT. That supplemental memorandum is submitted herewith. It is needed to meet the issues newly raised in the reply memorandum filed by defendant Bally Manufacturing Corporation (hereinafter "Bally") in support of its motion.

On November 26, 1974, Bally filed its motion seeking summary judgment dismissing this action as to it on the ground that, in the words of the motion, it "neither makes, uses, nor sells any of the accused devices, nor has it committed

genuine issues of material fact and, thus, should be denied.

Respectfully submitted,



Theodore W. Anderson

Attorney for Plaintiffs  
The Magnavox Company  
and  
Sanders Associates, Inc.

77 West Washington Street  
Chicago, Illinois 60602  
(312) 346-1200

February 10, 1975

Of Counsel:

Thomas A. Briody, Esquire  
The Magnavox Company  
1700 Magnavox Way  
Fort Wayne, Indiana 46804

Louis Etlinger, Esquire  
Sanders Associates, Inc.  
Daniel Webster Highway, South  
Nashua, New Hampshire 03060

James T. Williams  
Neuman, Williams, Anderson & Olson  
77 West Washington Street  
Chicago, Illinois 60602

The inventors are Richard T. Cathers, William M. Douglass, Frederick D. Hess Jr., John Morris and James E. Roberts.

**Ship-Refueling System**  
A refueling system for combat ships at sea will transfer oil in a jet stream from a tanker without the use of a hose.

According to the patent, the fuel is pumped from an oiler's tanks through a nozzle that shoots a coherent stream to a receiver on the combat ship alongside, from 60 to 200 feet away.

Because of the rocking who shift in the relative position of the ships, the oil stream is to be kept properly pointed by automatic training and elevation equipment covered by another Navy patent.

The refueling system has been tested, but not in full scale or aboard ship, and Mr. Waldron says some problems need further study.

lightrope apparatus invented by an engineer and his life is intended to enable amateur acrobats to perform doors or out. Cyril F. Baker Bell Telephone Laboratories, Orlando, Fla., and

Continued From Page 39

Samuels, United Deputy Undersecretary for Trade, and Prof. Ralf Dahrendorf, market commissioner for trade, said at the end of talks they had not

The tightrope-walker set, as described in the patent, includes rope, tuckers, cross braces, bolts and instructions. The user can keep upright with a balancing pole or a parasol, and after practice can pick up a handkerchief from the floor or ground. The tightrope is 1 1/2 inches

Home Games \* Use TV  
Electronics

Patents 3,659,284 and 3-659,285, granted this week to William T. Rusch and two other staff members, have been licensed to a major television manufacturer, whose name has not been disclosed. The equipment may reach the market this year.

In table tennis, three dots may represent two paddles and a ball, and the ball moves in a certain direction when hit by a paddle. A mask placed across the screen serves as a net.

For game purposes, advantage may be taken of commercial, closed-circuit or cable television programs.

To get a copy of a patent, send the number and 50 cents to the Commissioner of Patents, Washington, D.C. 20231. Design patents are 20 cents each. To reach an inventor or assignee, if the address given is insufficient, write him care of the Commissioner of Patents, being sure to cite the patent number.

[illegible]

Continued From Page 30

By contrast, loan losses at these 10 banking concerns—BankAmerica, First National City, Chase Manhattan, Manufacturers Hanover, J. P. Morgan, Chemical New York, Bankers Trust New York, Continental Illinois, First Chicago and Security Pacific—soared from \$75.9-million for the full year 1963, to \$159.3-million in 1970 to \$192.5-million in 1971.

Not all of the banks were down, however. At Chemical Bank, losses rose to \$1.4-million this year from \$974,000 in 1971, and at the Franklin National Bank (which is not included in the tabulation of the 10 largest banks), loan losses jumped to \$2.1-million from \$1,600,000.

Earlier this week, at the annual meeting of the Franklin New York Corporation, the parent company of the bank, Arthur T. Roth—who built Franklin from a small Long Island institution to one of the nation's largest banks—attacked his successor, Harold V. Blanton, for his assertedly poor performance, including rising loan losses.

CHICAGO, April 28 (AP) — The Chicago Mercantile Exchange announced today the sale of a membership at a high of \$80,500.

Buyer of the new membership was Raymond Reznick, an executive vice president of Weis, Volin & Co., New York Stock Exchange member firm. The seller was William E. Read of the Crayon Commodity Corporation, Dallas, Tex.

Continued From Page 39

United States monetary reserve assets in March, also reported today, again showed little change, reflecting the non-convertible status of the dollar. There was no change in holdings of gold or Special Drawing Rights (paper gold).

**A Correction**  
The Clark Equipment Company expects to earn more than \$3 a share in 1972, up from \$2.30 a share in 1971. The latter figure appeared incorrectly in yesterday's editions because of a typographical error.

The Clark Equipment Company expects to earn more than \$3 a share in 1972, up from \$2.35 a share in 1971. The latter figure appeared incorrectly in yesterday's editions because of a typographical error.

[illegible]

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WELL

# ATTACHMENT I

# New toy makes TV an electric game board

SIX YEARS AGO, a German-born American engineer in Nashua, N. H., turned his restive mind to the problem of what one could do with one's television set besides watch it. He decided it could be used for playing games.

The result, on the market since August, is Odyssey, a \$99.95 package of electronic equipment, charts, dice, cards and playing fields which will allow two people to simulate—on their TV screen—games of tennis, Ping-Pong, football, hockey, Submarine, Simon Says, roulette, Cat and Mouse, Analogic, Haunted House and States. A single individual operating the gadget also can simulate skiing, and for small additional investments, one can get material to play baseball, handball, volleyball, Invasion and Fun Zoo, to "shoot" at moving targets or "drive" an auto racing circuit.

If you find this a little spacey, you are not alone. Inventor Ralph Baer sold the huge technical firm where he works on the idea, but it took years to find a manufacturer. All the big names in television manufacturing looked at it. Many of them found it an intriguing idea but a risky one. Finally Magnavox, after researching the potential market, committed itself to a multi-million dollar risk and bought the copyright, to Odyssey. The electronic game set can be bought only at Magnavox dealers.

**ODYSSEY WORKS THRU** remote control, either by battery or external current. You can permanently attach an Odyssey receiver to any TV set which can muster a lighted screen. Good reception is not necessary. Once the receiver is attached, you set up the remote control center, to be operated by the players. Then you choose your game. All involve sticking an overlay—marked as a playing field—made of plastic material which will adhere to most picture tubes simply by static electricity. [If your tube isn't electric enough, it can also be taped.] The overlays come in



Johanna Steinmetz



## TV Report

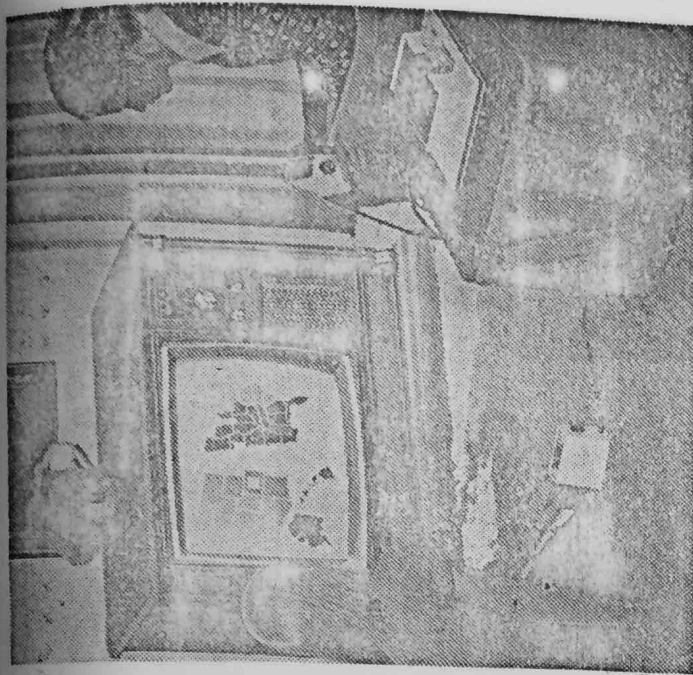
sizes to fit 18- and 25-inch sets. If your set is smaller, suggests Baer, use Saran Wrap and mark it with a magic marker to suit your game plan.

The next step is to insert a game card programmed for the particular game you are playing into the control center. This will furnish the screen with two movable players—squares of light—and one movable ball—a smaller square of light—which will react to one another according to the game in play.

When the game is set up, it becomes a matter of each player's skill and swiftness in handling the knobs on his remote control box. There is a knob to move the player's square vertically, a knob to move it horizontally and a knob to put "English" on the ball. The latter naturally, is the hardest to master.

The games range from the very simple, for young children and families, to the very complex. Tennis and Ping-Pong are simple in action. Simon Says and Haunted House are simple in concept. Football could take a year to get the hang of: It involves a chart to calculate wind factors, dice, drawing cards for strategy and the switching of passing, running and kicking program cards in and out of the remote control center as called for in the game.

WHEN ODYSSEY WAS demonstrated in my home



It's a new TV game show, but the audience does all the playing.

Tuesday morning, what few housekeeping instincts I have immediately reacted to its major drawback—packaging. In order to keep the cost within bounds, the game set comes in a large styrofoam box. It is filled with all the things you usually find in games but times seven—tokens, card decks, rubber bands, a die, playing fields, scorecards, markers, chips and folders. These must somehow be kept from winding up in the toybox, the old newspaper pile or under chair cushions.

Ralph Baer says he invented Odyssey "for the money" pointing out that the United States has 65,000,000 TV homes alone and that there is still the rest of the world to conquer. The only hitch is that Baer's invention belongs to the technical firm he works for, which in turn sold the worldwide copyright to Magnavox. Since the law stipulates that an inventor must be paid something, however, Baer is in receipt of \$3 or \$4, \$1 for each patent involved in the game.

"But, the company has ways of rewarding me," says Baer. "I'm quite satisfied."

The Christmas spirit to be sure.



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BALLY MANUFACTURING	)	
CORPORATION, a Corporation	)	
et al.,	)	
	)	
Defendants.	)	

SUPPLEMENTAL AFFIDAVIT OF THOMAS A. BRIODY

STATE OF INDIANA	)	
	)	SS:
COUNTY OF ALLEN	)	

I, THOMAS A BRIODY, do depose and say as follows:

1. I am the same THOMAS A. BRIODY who on January 2, 1975 executed an Affidavit in the above-captioned action.

2. Magnavox has in the past and is now marketing a video game under the trademark "ODYSSEY". The two United States patents in suit in the above-captioned action, Nos. 3,659,284 and 3,659,285, relate at least in part to video games.

3. On November 27, 1972, a Roy E. Petherbridge contacted me twice by telephone. During our first telephone conversation, Mr. Petherbridge stated that he was an attorney and wanted to inquire as to whether the Magnavox Company was willing to grant licenses under the patent rights it had in its "ODYSSEY" video game. During that first conversation, Mr. Petherbridge did not reveal to me the identity of the client on whose behalf his inquiry was being made.

4. During my second telephone conversation with Mr. Petherbridge on November 27, 1972, he stated that the inquiry referred to in paragraph 3 hereof was being made on behalf of Bally Manufacturing Corporation, Chicago, Illinois.

5. On December 12, 1972, I wrote a letter to Mr. Petherbridge to inform him of the decision of The Magnavox Company with respect to his inquiry. A copy of that letter is attached hereto as Exhibit G.

Thomas A. Briody  
Thomas A. Briody

SUBSCRIBED and SWORN to before me in Fort Wayne, Indiana, this 3<sup>rd</sup> day of February, 1975.

Linda Jeanne Schumann  
Notary Public

My Commission Expires: September 2, 1978



December 12, 1972

Mr. Roy E. Petherbridge  
53 West Jackson Boulevard  
Chicago, Illinois 60604

Dear Roy:

During our several previous conversations, we have discussed the interests of your client, Bally Manufacturing of Chicago, in obtaining a license under our Odyssey patents.

This is to inform you that we are not presently disposed to grant licenses to any other companies under these patents. Upon reference to our management, it has been indicated that we are in the process of learning the many successful ways by which this product may and should be promoted. Without this know-how, we feel that a licensee would have considerable difficulty.

Accordingly, we wish to defer, at this time, any further consideration of licensing Bally. We are presently hopeful that during the first quarter of 1973, we will have a better appreciation of the market concerning Odyssey and, accordingly, will be in a better position to give honest consideration to various licensing proposals which have been presented to us.

Cordially yours,

Thomas A. Briody

TAB/mr

bcc: Bob Wiles  
Bob Fritsche  
G. G. Martin